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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,758	04/18/2006	Joseph Noblett	5955300021	3003
32294 7590 11/19/2008 SQUIRE, SANDERS & DEMPSEY L.L.P. 8000 TOWERS CRESCENT DRIVE 14TH FLOOR VIENNA, VA 22182-6212				
EXAMINER NGUYEN, TRINH T				
ART UNIT		PAPER NUMBER		
3644				
MAIL DATE		DELIVERY MODE		
11/19/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/565,758

Applicant(s)

NOBLETT, JOSEPH

Examiner

Trinh T. Nguyen

Art Unit

3644

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Amend. dated 8/13/08.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1.5 and 16-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1.5, 16-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S5108)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1,5 and 16-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

For claim 1, the phrase "the tree retaining member is connected to the base" is confusing since in lines 6-11 of page 14 of Applicant's specification, Applicant only indicates that the fluid reservoir 4 is connected to the base 10 and that the tree retaining member 6 is connected concentrically within the fluid reservoir 4. Furthermore, regarding the phrase "such as screws, bolts or the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1,5 and 16-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Graves (US 5482245).

For claim 1 (as best understood), Graves discloses a tree stand comprising a fluid reservoir (12) about a tree retaining member (10) including tree gripping means (76), wherein the tree gripping means comprise projections:

wherein the fluid reservoir (12) comprises a cylindrical or frustoconical member being closed at one end thereof by a base (note that reservoir 12 is a container and therefore it has a closed end and that the closed end serves as a base), wherein the tree retaining member is connected to the base (note that the tree retaining member is connected to the base of the reservoir when the tree retaining member is inserted within the reservoir):

wherein the tree retaining member (10) comprises a substantially cylindrical hollow member and the tree gripping means comprising a plurality of projections (the end of member 76 where it protrudes inside member 70; see Figure 3) arranged on the interior surface of the tree retaining member;

and wherein the tree retaining member is adapted to retain a tree inserted therein without using any moveable mechanical means such as screws, bolts or the like (note that the tree retaining member is adapted to retain a tree inserted therein by the use of the tree gripping means (76) and the nail member (84); see Figures 6 and 7).

For claim 5, Graves discloses the tree retaining member (10) does not substantially protrude from the fluid reservoir (12) (see Figure 1).

For claim 16, Graves discloses the projections substantially axially with the tree retaining member (see Figure 3).

For claim 17, Graves discloses the projections are arranged to maintain a degree of separation between a tree trunk inserted into the tree stand, and portions of the interior surface of the tree retaining member (see Figure 6).

For claim 18, Graves discloses the projections include a sharp or pointed portion (the end of member 76 where it protrudes inside member 70; see Figure 3) arranged in use to at least partially penetrate the trunk of a tree inserted into the tree retaining member.

For claim 19, Graves discloses wherein the fluid reservoir (12) and tree retaining member (10) are in fluid communication (note that member 10 has a bottom member 80 wherein the bottom member 80 includes three triangular openings on the circumference in which causes member 10 to be in fluid communication with reservoir 12 when member 10 is inserted within reservoir 12; see Figures 3 and 4).

Response to Arguments

5. Applicant's arguments filed 8/13/08 have been fully considered but they are not persuasive.
6. Applicant argues that Graves fails to disclose "a tree stand comprising a fluid reservoir about a tree retaining member including a tree gripping means. The tree gripping means comprises projections. The fluid reservoir comprises a cylindrical or frustoconical member being closed at one end thereof by a base. The tree retaining member is connected to the base. The tree retaining member comprises a substantially cylindrical hollow member, and the tree gripping means comprises a plurality of projections arranged on the interior surface of the tree retaining member. The tree

retaining member is adapted to retain a tree inserted therein without using any movable mechanical means such as screws, bolts, or the like", Applicant's argument has been acknowledged. However, it is note that Graves discloses a tree stand comprising a fluid reservoir (12) about a tree retaining member (10) including tree gripping means (76), wherein the tree gripping means comprise projections: wherein the fluid reservoir (12) comprises a cylindrical or frustoconical member being closed at one end thereof by a base (note that reservoir 12 is a container and therefore it has a closed end and that the closed end serves as a base), wherein the tree retaining member is connected to the base (note that the tree retaining member is connected to the base of the reservoir when the tree retaining member is inserted within the reservoir): wherein the tree retaining member (10) comprises a substantially cylindrical hollow member and the tree gripping means comprising a plurality of projections (the end of member 76 where it protrudes inside member 70; see Figure 3) arranged on the interior surface of the tree retaining member; and wherein the tree retaining member is adapted to retain a tree inserted therein without using any moveable mechanical means such as screws, bolts or the like (note that the tree retaining member is adapted to retain a tree inserted therein by the use of the tree gripping means (76) and the nail member (84); see Figures 6 and 7).

7. Applicant's arguments with respect to the reference Yocca has been acknowledged but are moot in view of the new ground(s) of rejection as stated above.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Trinh T. Nguyen whose telephone number is (571) 272-6906. The examiner can normally be reached on M-F (9:30 A.M to 6:00 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mansen can be reached on (571) 272-6608. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Trinh T Nguyen/
Primary Examiner, Art Unit 3644
11/17/08

Application Number**Application/Control No.**

10/565,758

Examiner

Trinh T. Nguyen

**Applicant(s)/Patent under
Reexamination**

NOBLETT, JOSEPH

Art Unit

3644